

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: **MAR 26 1996**

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

EO:TS:4920DAL:RH

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information you submitted indicates that you were formed by Articles of Consolidation and Articles of Incorporation filed with the Secretary of State on [REDACTED]. Your specific purposes, as stated in your Articles of Incorporation, are "civic and social, for the benefit and betterment of the residents and property owners and to provide for maintenance, preservation and architectural control of the residence lots and common area."

Your application states that you (a) maintain and landscape esplanades, roadsides and common areas; (b) provide pest control in the common areas; (c) provide law enforcement; (d) contract with [REDACTED] to provide street lights on public roads; (e) contract with a management company to monitor and enforce deed restrictions; and (f) contract for trash removal.

The area served by [REDACTED] is a single-family residential development within [REDACTED] County, [REDACTED], adjacent to similar single-family developments. There is no indication of businesses, churches, or schools within the area served by the organization. The Postal Service designation for residents of this area is [REDACTED]. The [REDACTED] School District serves the area.

You are managed by a professional management company which contracts for services, enforces deed restrictions, collects assessments, pays the bills, etc., of the subdivision. You have no physical address other than that of [REDACTED], the management company. Contracting for trash removal service and additional law enforcement/security service is also a significant activity of your organization. In fact, contractual services provided on the behalf of your members, and enforcement of the restrictions to protect their interest, are the main thrust of this organization.

You are supported through member assessments and nominal interest and miscellaneous income. Your application states that the association does not charge members separately for services performed and that the amounts are budgeted and included in annual assessments. Unpaid assessments will result in

a lien on the property of the homeowner-member. Membership is open exclusively to homeowners in the subdivision, and all homeowners must be members. No member may waive or otherwise escape liability for the assessments.

Section 501(c)(4) of the Internal Revenue Code provides exemption for:

"Civic Leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..."

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that:

"An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements."

"(a)(1) In general. A civic league or organization may be exempt as an organization described in section 501(c)(4) if -

- (i) It is not organized or operated for profit; and
- (ii) It is operated exclusively for the promotion of social welfare

Revenue Ruling 72-102, 1972-1, C.B. 149, describes an organization formed by a developer to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for the use of the residents, which was found to be exempt under Internal Revenue Code section 501(c)(4). The rationale behind this decision was that the organization served the common good and general welfare of the entire community because it owned and maintained certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments. Administering and enforcing covenants for preserving the architecture and appearance of a housing development was incidental to the overriding public benefit.

Revenue Ruling 74-99, 1974-1, C.B. 131, modified Revenue Ruling 72-102. This ruling describes an organization that is formed by a commercial real estate developer as an integral part of a plan for the development of a subdivision. Membership in the association is required of all purchasers of lots in the development. Membership is open only to the developer and those who purchase lots. The organization is supported by periodic assessments of the members, and unpaid assessments will result in a lien on the property of the homeowner-member. The stated purposes of the organization are to administer and enforce covenants for preserving the architecture and appearance of the given real estate development, and to own and maintain common green areas, streets, and sidewalks. The foregoing format is spelled out in written documents which form a part of, and are inextricably tied to, enforceable contracts for the sale and purchase of private property. In light of these factors, the prima facie presumption was that organizations such as these were essentially and primarily formed and operated for the individual business and personal benefit of their members, and, as such, did not qualify for exemption under section 501(c)(4) of the Code. Revenue Ruling 74-99 went on to describe how, in certain circumstances, an organization can overcome this presumption and qualify for recognition of exemption under section 501(c)(4).

In Rancho Santa Fe Association, the development was found to be coextensive with the community it served, and therefore, the benefits bestowed by the association on the development benefit the general public within the requirements of the statute. Exemption under section 501(c)(4) was recognized.

Based on the information presented, we have concluded that you do not meet the requirements for exemption as a social welfare organization described in section 501(c)(4) of the Internal Revenue Code. Serving the private interests of your homeowner-members is your purpose. You do not possess the characteristics described in Revenue Ruling 74-99 to overcome the presumption of private benefit.

Unlike Rancho Santa Fe Association, your area is not coextensive with the community you serve. You are not a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a government subdivision. In support of this fact, it should be noted that you do not oversee governance of the development, but contract for these services with a management company.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(4), and you are required to file Federal income tax returns on Form 1120.

As a homeowners' association, you may qualify for treatment under section 528, section of the Code created by the Tax Reform Act of 1976. In this letter we are not ruling on the question of whether you qualify for treatment under section 528. However, if you believe you qualify for such treatment, you should file Form 1120-H when due.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

District Director